STATE OF MICHIGAN

COURT OF APPEALS

CITY OF ALPENA, Petitioner-Appellee,	UNPUBLISHED February 14, 2012
v	No. 300833 Tax Tribunal
STATE TAX COMMISSION, Respondent-Appellant.	LC No. 00-330577

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right an order of the Michigan Tax Tribunal granting petitioner's motion for summary disposition pursuant to MCR 2.116(C)(10) and denying respondent's motion for summary disposition. We affirm.

I. STIPULATED FACTS AND PROCEEDINGS[1]

A. FACTS

The instant dispute concerns a 101.8-acre parcel of property ("the Property"). The Property was owned by petitioner during all of the tax years at issue. Petitioner purchased three contiguous parcels of property in 2000 and 2001 and annexed the Property in 2001.

The Property was purchased in order to expand petitioner's economic base by increasing commercial and/or industrial development; petitioner had "little, if any, land available for large commercial development and only a limited amount of industrial land for smaller industrial uses." Specifically, petitioner hoped to develop the Property as a "commercial corridor" in order to maintain a "centralized retail center" due to the Property's US-23 frontage and connection by roads to US-23, the main highway running through the city.

[1] In the proceedings before the tribunal the parties stipulated to a set of material facts, which we rely upon in detailing the factual background of this case.

In November of 2000, petitioner formed a committee to plan the development of the Property. The committee held regular meetings to plan development and marketing of the Property. Also in 2000, Petitioner instituted a ballot proposal seeking permission from its citizens to sell the Property in order to "maintain and expand [petitioner's] economic base," which passed with 75% of the vote. "For Sale" signs were placed on the Property and petitioner began working with a realtor to market the Property.

In 2001, petitioner sought to have Alpena Community College donate street right-of-ways so that streets could extend from College property to the Property. Petitioner accepted a bid from a contractor to install water and sewer utilities on the Property in 2001. Petitioner applied for and obtained a permit application for wastewater systems from the Michigan Department of Environmental Quality (MDEQ) in 2001.

Beginning in 2002, petitioner used the Property each year to store snow removed from downtown streets and sidewalks. Also in 2002, petitioner directed the City Engineer, City Planner, and City Assessors to develop "several land development scenarios" for the Property. Petitioner hired a service to conduct soil borings on the Property to estimate construction costs for the installation of water and sewer utilities and possible foundation excavations. Petitioner obtained preliminary estimates for the construction of paved roads and the installation of water and sewer lines on the Property in anticipation of purchase by a developer.

In 2003, petitioner accepted a bid from a contractor to complete utility improvements on the Property. Also in 2003, petitioner sold 10 acres of the Property to a purchaser that intended to build a retirement community on the site. The purchaser ultimately decided to build on another site and resold the property to petitioner in 2006. Petitioner accepted another offer to purchase 1.26 acres of the Property in 2003, and the purchase agreement was extended to 2004.

Petitioner began planning for the platting of the Property in 2005. However, at the time of the dispute, no plat had been filed or recorded. Also in 2005, petitioner "compiled information on land values" for the land development scenarios it had developed. Petitioner accepted an offer to purchase a portion of the Property from an automobile dealership, although the dealer later decided to build its dealership at another location. Finally, petitioner began offering a "price reduction" incentive to potential purchasers, contingent on how much capital the purchaser planned on investing and how many jobs the purchaser intended on creating in 2005. Petitioner renewed this incentive in 2007 and 2008.

In 2006, petitioner obtained a wetland assessment report from MDEQ that was valid until November 14, 2008, the purpose of which was to spare potential investors and developers the expense of obtaining the report. In 2007, petitioner "facilitated the disposal of dredging materials" from Alpena Harbor at the Property. The dredging and disposal would both have beneficial effects for the interests in Alpena Harbor and provide a source of material for use on the Property. Also in 2007, the petitioner "entertained an offer" to purchase a portion of the Property from a developer that sought to construct a trucking terminal.

In 2009, petitioner contracted with a trade publication to market the Property; an advertisement appeared for the Property in its May/June 2009 issue. Also in 2009, petitioner contracted with a development corporation to promote the development of the Property.

B. TRIBUNAL PROCEEDINGS

In 2007, respondent issued an order revising the taxable status of the Property from exempt to taxable for years 2004 to 2006. Petitioner appealed this order to the Tax Tribunal. Pursuant to MCL 205.737(5)(a), petitioner's appeal was automatically amended to include the tax years of 2007 through 2010. Petitioner and respondent filed cross-motions for summary disposition pursuant to MCR 2.116(C)(10). The tribunal held that petitioner had used the Property for the public purpose of economic development under the test articulated by the Supreme Court in *Mt Pleasant v State Tax Comm*, 477 Mich 50, 56; 729 NW2d 833 (2007). The tribunal granted petitioner's motion for summary disposition and denied respondent's motion for summary disposition, and this appeal followed.

II. STANDARD OF REVIEW

On appeal, a tribunal's decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). We review the record in the same manner as the tribunal, which is to consider all material facts in a light most favorable to the nonmoving party, to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). Review is limited to the evidence that had been presented to the tribunal at the time the motion was decided. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 476; 776 NW2d 398 (2009).

III. ANALYSIS

We hold that the tribunal correctly determined that petitioner established that it was entitled, as a matter of law, to claim the Property as exempt from ad valorem taxation under MCL 211.7m. *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002) (the taxpayer asserting the exemption has the burden of establishing it is entitled to the exemption by a preponderance of the evidence).

MCL 211.7m provides in relevant part that "[p]roperty owned by . . . a county, township, city, village or school district used for public purposes . . . is exempt from taxation" under the General Property Tax Act (GPTA), MCL 211.1 *et seq*. The tribunal's decision that determined that the Property was "used" for a "public purpose" under MCL 211.7m was consistent with the rule articulated by the Supreme Court in *Mt Pleasant*.

In *Mt Pleasant*, the Michigan Supreme Court interpreted MCL 211.7m and concluded that, in order for the exemption of MCL 211.7m to apply, during each tax year in question the city (1) must have made a present use of the land (2) that qualifies as a "public purpose." *Mt Pleasant*, 477 Mich at 56. Importantly, the *Mt Pleasant* Court held that economic development constitutes a "public purpose" because "[d]rawing commerce to an area promotes prosperity and the general welfare" and "creating jobs for Michigan's citizens and stimulating private investment and redevelopment to ensure a healthy and growing tax base" advances that public purpose. *Id.* at 54. In *Mt Pleasant* the city had no vacant industrial land within its limits and had acquired the land at issue and prepared it for development in effort to enhance its tax base. *Id.* at 55. The city determined that it needed a major street grid expansion that required annexation of

lands outside the city limits, that the land at issue could provide a location for low-income and elderly housing, and that the city needed to expand its tax base with industrial development. *Id.* Like the city in *Mt Pleasant*, here petitioner undeniably purchased the property for purposes of economic development, and the stipulated facts establish that petitioner has pursued this purpose ever since. "Because we have determined that the city's efforts at economic development and enhancing the tax base were for 'public purposes,' we must next determine when the city 'used' the land for these public purposes." *Id.* at 56.

The next step, then, is to undertake a fact-intensive analysis of petitioner's efforts during each tax year in question to determine if it had made a "present use" of the land. *Mt Pleasant*, 477 Mich at 56. Under this inquiry "the court must consider what steps the city has taken to move from merely holding the land to actually using it for a public purpose." *Id.* In doing so, we decline to adopt respondent's contention that activities undertaken by petitioner in tax years not at issue are irrelevant to our analysis. Indeed, the *Mt Pleasant* Court noted that "[t]he reality of economic development is that acquiring and improving land for resale is not done in a day" and looked at the city's "ongoing actions in annexing, assembling, marketing, and preparing the land for resale" in determining that the city had used the land for public purposes. *Id.* at 56-57. The Court noted that the city "actively prepared and marketed the land at issue in accordance with its plan to foster economic development" for all tax years at issue. *Id.* at 57. In support of this conclusion, the Court emphasized the following facts:

> In this case, the city conducted numerous activities that lead to the conclusion that the city 'used' the land for a public purpose. The city engaged in a number of activities, such as expanding and installing streets and public utilities, to indicate that it purposefully moved toward implementation of its development plan for the land and did not delay in engaging in reasonable activities to prepare the land to attract economic development that would create jobs, stimulate investments, and ensure a sound and growing tax base. The reality of economic development is that acquiring and improving land for resale is not done in a day. It takes time to assemble and prepare land. Consequently, the city's ongoing actions in annexing, assembling, marketing, and preparing the land for resale to attract economic development indicate that the land was indeed 'used for public purposes.' [*Id.* at 56-57.]

So too here. The stipulated facts reveal petitioner's efforts to ensure success of this economic development, in part by: partially improving the land, obtaining permits and samplings to make private investment less burdensome, creating plats, maps and varying development plans, conducting innumerable meetings to discuss future strategy, offering financial incentives to prospective purchasers, and by actively marketing the Property, to name a few. These acts squarely fall within what the *Mt Pleasant* Court considered as relevant acts establishing that the property was "used" for the public purpose. Therefore, the tribunal correctly granted petitioner's motion for summary disposition.

Respondent correctly notes that in *Mt Pleasant* actual improvement and development took place on the subject property. Respondent asserts that the Property remains vacant and unimproved in 2010, and has not been put to any "use" whatsoever. However, the analysis in *Mt Pleasant* focused on *all* of the city's activities to determine if the city developed and

"purposefully moved towards implementation" of its plan for economic development of the subject property. *Mt Pleasant*, 477 Mich at 58-60. Although present use must have occurred in each tax year at issue, the Court did not state that structures must be built on the land each year, or that parcels of the land must be sold each year. In fact the Court simply noted during the tax years at issue that the city "continued to market and sell the land." *Id.* at 60. We decline respondent's attempts to graft a results-oriented approach onto the rule articulated in *Mt Pleasant*. Nothing in *Mt Pleasant* requires that a city must have succeeded in its plans for economic development by the time any dispute arises over the taxable status of property receiving the benefit of the exemption of MCL 211.7m.

We also find *Traverse City v East Bay Twp*, 190 Mich 327; 157 NW (1916), instructive. In *Traverse City*, the city purchased land that was held for future development of the city's power plant. *Id*. at 328. The city admitted that the land was undeveloped and that there was *no present plan* to develop it, *id.* at 329, causing the *Mt Pleasant* Court to note that the land in *Traverse City* "was not part of any plan with a broader vision[,]" *Mt Pleasant*, 477 Mich at 57. The city had not even attempted to improve the land and admitted that "[t]he land . . .was being held for pure speculation—there was not even a vague plan regarding when or if the land would be used in the future." *Id*.

As we have discussed, petitioner's plan for the Property was not "merely aspirational." *Mt Pleasant*, 477 Mich at 57. Petitioner made attempts to develop and improve the land, including obtaining estimates for roads and utilities and accepting a bid from a contractor to install utilities. It also sold at least one parcel, although it was ultimately forced to repurchase it. It took steps toward platting the Property and increased its efforts to market and sell the Property over the years. Thus, petitioner's efforts towards development of the Property are substantially different than the city's mere holding of undeveloped land in *Traverse City*.[2]

IV. CONCLUSION

Under the rule of *Mt Pleasant*, petitioner used the Property for a public purpose in the tax years 2004 through 2010. The Property was, therefore, properly listed as exempt from ad valorem taxation under MCL 211.7m. The tribunal properly applied controlling Michigan precedent and correctly granted summary disposition in favor of petitioner.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

[2] We also note that it was undisputed that petitioner used the Property to store snow removed from the city's downtown streets and sidewalks for each tax year at issue. Although minimal, this is certainly constitutes present use for a public purpose.